

OCA 3133-88

OCA FILE

LEG

Attached is a draft bill which was given to the National Security Council by Senator Dole's staff which imposes sanctions against firms involved in the transfer of chemical weapons to Iran, Iraq, Libya, and Syria. The NSC legislative staff informed us that the bill could move quickly through the Senate if Senator Byrd supports it.

The DDI has expressed interest in this legislation.

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100th CONGRESS  
2d Session

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IN THE SENATE OF THE UNITED STATES

Mr. Dole (for himself, Mr. Boschwitz, and Mr. Helms) introduced the following bill; which was read twice and referred to the Committee on

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A BILL

To amend the Arms Export Control Act to impose sanctions against firms involved in the transfer of chemical agents or their related production equipment or technical assistance to Iran, Iraq, Libya, and Syria, and for other purposes.

1     Be it enacted by the Senate and House of Representatives  
2     of the United States of America in Congress assembled,

3     SECTION 1. SHORT TITLE.

4     This Act may be cited as the "Chemical Warfare Control  
5     Act".

6     SEC. 2. FINDINGS.

7     The Congress finds that--

8     (1) the General Agreement on Tariffs and Trade

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1 recognizes that national security concerns may serve as a  
2 legitimate basis for constricting free and open trade;  
3 title XXI of the General Agreement on Tariffs and Trade  
4 states that "(n)othing in this Agreement shall be  
5 construed . . . to prevent any contracting party from  
6 taking any action which it considers necessary for the  
7 protection of its essential security interests . . . .";

8 (2) It is necessary for the protection of the  
9 essential security interests of the United States to halt  
10 immediately all trade in chemical weapons, and transfers  
11 of technology and delivery systems for chemical weapons,  
12 to certain destinations;

13 (3) four countries of the Middle East, Iran, Iraq,  
14 Libya, and Syria, either support terrorism as a national  
15 policy or have done so in the recent past;

16 (4) Iran, Iraq, Syria, and Libya are either producing  
17 chemical weapons or on the verge of doing so;

18 (5) chemical weapons have been used by Iraq against  
19 its own citizens;

20 (6) chemical weapons represent a grave new threat to  
21 friendly countries of the Middle East and ultimately the  
22 United States itself;

23 (7) Free World industrial firms have been  
24 instrumental in the development of chemical weapons in  
25 Third World countries;

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1 (8) any efforts by Communist-bloc countries to aid  
2 and abet the production or use of chemical weapons, or to  
3 develop and deploy delivery systems for chemical weapons,  
4 by Iraq, Libya, or any other nation of the Middle East/  
5 Persian Gulf region are deplorable;

6 (9) international cooperation has so far been unable  
7 to stem the trade in chemical weapons and their  
8 industrial inputs; and

9 (10) in order to halt the trade in chemical weapons  
10 and their industrial inputs, severe sanctions must be  
11 applied to individuals and firms which export prohibited  
12 items and technology to proscribed destinations.

13 SEC. 3. POLICY.

14 It should be the policy of the United States to take all  
15 appropriate measures--

16 (1) to discourage the proliferation of the material  
17 and technology necessary and intended to produce or  
18 deliver chemical weapons;

19 (2) to discourage all states from acquiring such  
20 material and technology;

21 (3) to discourage Communist-bloc countries from  
22 aiding and abetting other countries from acquiring such  
23 material and technology; and

24 (4) to discourage private companies in non-Communist  
25 countries from aiding and abetting other nations from

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1 acquiring such material and technology.

2 SEC. 4. AMENDMENT TO THE ARMS EXPORT CONTROL ACT.

3 The Arms Export Control Act is amended by adding at the  
4 end thereof the following new chapter:

5 \*\*CHAPTER 7--SANCTIONS AGAINST FIRMS TRANSFERRING CHEMICAL  
6 WEAPONS TO TERRORIST COUNTRIES

7 \*\*SEC. 71. PROHIBITION ON CERTAIN EXPORTS.

8 \*\* (a) Prohibition.--(1)(A) No item on the list prepared  
9 by the President under paragraph (2) which is subject to the  
10 jurisdiction of the United States or which is exported by a  
11 person subject to the jurisdiction of the United States may  
12 be exported to a country described in subsection (b).

13 \*\* (B) Subparagraph (A) does not apply to any export  
14 pursuant to a contract entered into before the date of  
15 enactment of this section.

16 \*\* (2) The President shall prepare a list of chemical  
17 agents, production equipment, and technical assistance the  
18 export of which would materially assist a country in  
19 attaining a chemical warfare capability.

20 \*\* (b) Destinations of Exports.--The countries referred to  
21 in subsection (a) and section 73(a)(1) are Iran, Iraq, Libya,  
22 or Syria, except that any of these countries shall be  
23 excluded, for purposes of applying such provisions, beginning  
24 30 days after the President requests such exclusion by  
25 submitting the name of such country to the Congress.

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## 1    "SEC. 72. REPORT.

2       "(a) Not later than 90 days after the date of enactment  
3 of this section, and every 90 days thereafter, the President  
4 shall submit to the Speaker of the House of Representatives,  
5 the Minority Leader of the House of Representatives, the  
6 Majority Leader and Minority Leader of the Senate, the  
7 Permanent Select Committee on Intelligence and the Committee  
8 on Foreign Affairs of the House of Representatives and the  
9 Select Committee on Intelligence and the Committee on Foreign  
10 Relations of the Senate a report on efforts by Iran, Iraq,  
11 Libya, and Syria to acquire the material and technology to  
12 produce and deliver chemical weapons, together with an  
13 assessment of such countries' present and future capability  
14 to produce and deliver such weapons.

15       "(b) Such report shall also include an assessment of  
16 whether and to what degree Communist-bloc countries have  
17 aided and abetted the government of Iran, Iraq, Libya, or  
18 Syria in its effort to acquire the material and technology  
19 described in subsection (a).

20       "(c) Such report shall further list--

21        "(1) those companies in non-Communist countries  
22 which in the past have aided and abetted the government  
23 of Iran, Iraq, Libya, or Syria in that effort; and

24        "(2) those companies in non-Communist countries  
25 which continue to aid and abet the government of Iran,

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1 Iraq, Libya, or Syria in that effort, as of the date of  
2 the report.

3 "(d) Such report shall provide any confirmed or credible  
4 intelligence or other information that any non-Communist  
5 country has aided and abetted the government of Iran, Iraq,  
6 Libya, or Syria in that effort, either directly or by  
7 facilitating the activities of the companies listed in  
8 paragraph (1) or (2) of subsection (c) or had knowledge of  
9 the activities of the companies listed in paragraph (1) or  
10 (2) of subsection (c), but took no action to halt or  
11 discourage such activities.

12 "SEC. 73. MANDATORY SANCTIONS FOR FUTURE VIOLATIONS.

13 "(a) Determination by the President.--The President,  
14 subject to subsection (c), shall apply sanctions under  
15 subsection (b) for a period of 3 years, if the President  
16 determines that, on or after the date of enactment of this  
17 section, a United States or foreign person has exported any  
18 item in violation of section 71(a).

19 "(b) Sanctions.--The sanctions referred to in subsection  
20 (a) shall apply to any person committing the violation, as  
21 well as to any parent, affiliate, subsidiary, and successor  
22 entity of the person, and, except as provided in subsection  
23 (c), are as follows:

24 "(1) a prohibition on contracting with, and  
25 procurement of products and services from, a sanctioned

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1 person, by any department, agency, or instrumentality of  
2 the United States Government,

3 "(2) a prohibition on importation into the United  
4 States of all products produced by a sanctioned person,  
5 and

6 "(3) a suspension of patent rights, as described in  
7 section 75

8 "(c) Exceptions.--The President shall not apply  
9 sanctions under this section--

10 "(1) in the case of procurement of defense articles  
11 or defense services--

12 "(A) under existing contracts or subcontracts,  
13 including the exercise of options for production  
14 quantities to satisfy United States operational  
15 military requirements;

16 "(B) if the President determines that the person  
17 or other entity to which the sanctions would  
18 otherwise be applied is a sole source supplier of  
19 essential defense articles or services and no  
20 alternative supplier can be identified; or

21 "(C) if the President determines that such  
22 articles or services are essential to the national  
23 security under defense coproduction agreements; or

24 "(2) to--

25 "(A) products or services provided under



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1 contracts entered into before the date on which the  
2 President notifies the Congress of the intention to  
3 impose the sanctions;

4       "(B) spare parts;

5       "(C) component parts, but not finished products,  
6 essential to United States products or production;

7       "(D) routine servicing and maintenance of  
8 products; or

9       "(E) information and technology.

10       "(d) Definitions.--For purposes of this section--

11       "(1) the term 'component part' means any article  
12 which is not usable for its intended functions without  
13 being imbedded in or integrated into any other product  
14 and which, if used in production of a finished product,  
15 would be substantially transformed in that process;

16       "(2) the term 'finished product' means any article  
17 which is usable for its intended functions without being  
18 imbedded or integrated into any other product, but in no  
19 case shall such term be deemed to include an article  
20 produced by a person other than a sanctioned person that  
21 contains parts or components of the sanctioned person if  
22 the parts or components have been substantially  
23 transformed during production of the finished product;  
24 and

25       "(3) the term 'sanctioned person' means a person,

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1 and any parent, affiliate, subsidiary, or successor  
2 entity of the person, upon whom sanctions have been  
3 imposed under this section.

4 \*\*SEC. 74. PENALTIES.

5 \*\* (a) In General.--Whoever knowingly violates or  
6 conspires to or attempts to violate section 71(a) shall be  
7 fined not more than five times the value of the exports  
8 involved or \$50,000, whichever is greater, or imprisoned not  
9 more than 5 years, or both.

10 \*\* (b) Civil Penalties; Administrative Sanctions.--(1) The  
11 Secretary of Commerce (and officers and employees of the  
12 Department of Commerce specifically designated by the  
13 Secretary) may impose a civil penalty not to exceed \$10,000  
14 for each violation of section 71(a), either in addition to or  
15 in lieu of any other liability or penalty which may be  
16 imposed.

17 \*\* (2)(A) The authority under law to suspend or revoke the  
18 authority of any United States person to export goods or  
19 technology may be used with respect to any violation of  
20 section 71(a).

21 \*\* (B) Any administrative sanction (including any civil  
22 penalty or any suspension or revocation of authority to  
23 export) imposed under section 71(a) may be imposed only after  
24 notice and opportunity for an agency hearing on the record in  
25 accordance with sections 554 through 557 of title 5, United

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1 States Code.

2 "SEC. 75. SUSPENSION OF PATENT RIGHTS.

3 "(a) The term of a patent granted pursuant to title 35,  
4 United States Code, for any chemical agent or production  
5 equipment, produced by a sanctioned person, including any  
6 subsidiary of such person, under section 73(a) of the Arms  
7 Export Control Act, shall be suspended for a period of 3  
8 years.

9 "(b)(1) No rights under title 35, United States Code,  
10 shall be derived from any patent described in subsection (a)  
11 during the period of any such suspension.

12 "(2) Any suspension of patent rights imposed pursuant to  
13 the provisions of this section shall not extend the term of  
14 any such patent.

15 "(c)(1) Within 30 days after the date of enactment of  
16 this Act, the Commissioner of Patents, after a determination  
17 has been made regarding which companies have violated the  
18 provisions of this Act, shall recommend the suspension of the  
19 appropriate patents.

20 "(2) The Commissioner shall notify the holder of such  
21 patent within 30 days after the date of such determination  
22 and shall publish in the Federal Register a notice of such  
23 determination, together with the factual and legal basis for  
24 such determination. Any interested person may request, within  
25 the 60-day period beginning on the date of publication of a

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1 determination, that the Commissioner making the determination  
2 hold a hearing on such determination. Such a hearing shall be  
3 an informal hearing which is not subject to section 554, 556,  
4 or 557 of title 5, United States Code. If such a request is  
5 made within such period, the Commissioner shall hold such  
6 hearing not later than 30 days after the date of the request,  
7 or at the request of the person making the request, not later  
8 than 60 days after such date. The Commissioner who is holding  
9 the hearing shall provide notice of the hearing to the  
10 company involved and to any interested person and provide the  
11 owner and any interested person an opportunity to participate  
12 in the hearing. Within 30 days after the completion of the  
13 hearing, such Commissioner shall affirm or revise the  
14 determination which was the subject of the hearing and shall  
15 publish such affirmation or revision in the Federal Register.

16 "(d) The Commissioner may establish such fees as are  
17 appropriate to cover the costs of carrying out his duties and  
18 functions under this section.

19 "(e) The Commissioner shall make the determination that  
20 a patent is suspended and that the requirements of subsection  
21 (c) have been complied with. If the Commissioner determines  
22 that the patent is suspended, he shall issue to the owner of  
23 record of the patent a certificate of suspension, under seal,  
24 stating the length of the suspension, and identifying the  
25 product and the statute under which regulatory review

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1 occurred. Such certificate shall be recorded in the official  
2 file of the patent and shall be considered as part of the  
3 original patent. The Commissioner shall publish in the  
4 Official Gazette of the Patent and Trademark Office a notice  
5 of such suspension. . .